

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In Ref: GMAC MORTGAGE LLC  
Debtor

) Adv Complaint No.

) Case No.: 12-12032

GWENDOLYN B. HAWTHORNE,  
2377 SCOTT OAKS TRAIL SW  
MARIETTA, GA 30008

Plaintiff,

vs.

GMAC MORTGAGE LLC,  
1100 VIRGINIA DRIVE  
FORT WASHINGTON, PA 19034

AND

U.S. BANK NATIONAL ASSOCIATION

AND

GMFS LLC

7389 FLORIDA BLVD SUITE 200A

BATON ROUGE, LA 70806

AND

JUDY FABER, VICE PRESIDENT

AND

BRENDA GUIDRY

AND

MORTGAGE ELECTRONIC REGISTRATION

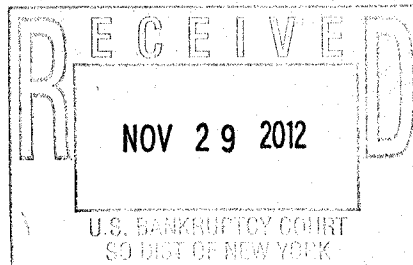
SYSTEM INC

AND

DUANE THOMPSON, ASSISTANT SECRETARY

MORTGAGE ELECTRONIC REGISTRATION

SYSTEMS INC AS NOMINEE FOR GMFS, LLC



DEBTORS' COMPLAINT TO DETERMINE NATURE AND EXTENT OF LIENS

PURSUANT TO 11 U.S.C. 506(A) - 1

1 RESIDENTIAL FUNDING CORPORATION

2 Defendant

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5 **DEBTORS' COMPLAINT TO DETERMINE NATURE AND EXTENT OF LIENS**

6 **PURSUANT TO 11 U.S.C. 506(A)**

7 Plaintiff/Creditor Gwendolyn B. Hawthorne, herein bring this adversary  
8 complaint to determine the nature and extent of liens that appear to be  
9 secured by Plaintiff's principal residence, and Complaint for Violations of  
10 the Racketeer Influenced and Corrupt Organizations Act but which are  
11 completely unsecured, pursuant to 11 U.S.C. 506(a).

12 **I. INTRODUCTION**

- 13 1. The protection of individual property rights is a cornerstone of  
14 American society and its jurisprudence. These rights are protected by  
15 well-established laws that provide the necessary checks and balances to  
16 ensure that these rights are not violated.
- 17 2. Ignoring fundamental rights of property ownership, the Defendants and  
18 their cohorts engaged in a pattern of racketeering activity in which  
19 they routinely and repeatedly prepared perjured affidavits in order to  
20 rapidly churn foreclosures of the Plaintiffs' mortgages without the  
21 necessary information and documentation.
- 22 3. The perjured affidavit in question were signed by so-called "robo-  
23 signers" (Duane Thompson) who often signed hundreds per day and had no  
24 personal knowledge of their contents or accuracy. The perjured  
25 affidavits/Assignments were submitted to courts and sent through  
26 interstate mails and wires, all in furtherance and perpetuation of the  
27 fraud. The robo-signers perjured themselves at the Defendants'  
28 direction by swearing that they had personal knowledge of information  
29 contained in the affidavits that they did not even read.
- 30 4. The Defendants' and their enterprise's activities amounted to a  
31 conspiracy to undermine the justice system in foreclosure proceedings.  
32 This foreclosure churning apparatus, through its multiple parts,

**DEBTORS' COMPLAINT TO DETERMINE NATURE AND EXTENT OF LIENS**

**PURSUANT TO 11 U.S.C. 506(A) - 2**

1 allowed the Defendants to operate the Mortgage Foreclosure Mill  
2 Enterprises, throwing families from their homes with callous disregard  
3 for the basic protections of the law and established American notions  
4 of justice.

- 5 5. As set forth below, the Plaintiff are entitled to actual and  
6 statutorily-enhanced damages caused by the Defendants' fraudulent  
7 activities under the Racketeer Influenced and Corrupt Organizations Act  
8 ("RICO"), 18 U.S.C. 1961-68. Plaintiff is entitled to damages for  
9 Defendants' violations of the Fair Debt Collection Practices Act  
10 ("FDCPA"), 15 U.S.C. 1692.

11 **II PARTIES**

- 12 6. GMFS LLC is a non-Louisiana limited liability company that is  
13 registered as a residential mortgage lender with the Louisiana Office  
14 of Financial Institutions. GMFS is engaged in, and its activities  
15 affect interstate commerce. At all relevant times, GMFS regularly  
16 extended consumer credit payable by written agreement in more than four  
17 installments for which a finance charge is imposed, table funded such  
18 loans and/or accepted assignment of such loans that had been originated  
19 by other lenders.

20  
21 **III. JURISDICTION**

- 22 7. Debtor(s) filed a Chapter 11 case in the above-entitled court on May  
23 14, 2012. As such, this Court has jurisdiction over these proceedings  
24 pursuant to 28 U.S.C. 1334(a), which provides that the District Court  
25 shall have original and exclusive jurisdiction of all cases and  
26 proceedings under Title 11 28 U.S.C. 157(a), which in turn authorizes  
27 the District Court to refer all Title 11 cases and proceedings to the  
28 bankruptcy judges for the district. This matter is a core proceeding  
29 pursuant to 28 U.S.C. 157(b)(2)(H). Plaintiff requests a trial by  
30 jury.

31 **IV. STATEMENT OF FACTS**

- 1 8. Plaintiff Gwendolyn B. Hawthorne is the owner of record, or have an  
2 equitable ownership in the real property commonly known as 2377 Scott  
3 Oaks Trail SW Marietta, GA 30008. ("the subject property").
- 4 9. The value of the property, as shown on Defendant's proof of claims is  
5 \$145,821.97. This is evidenced by the recorded Security Deed and  
6 fraudulent Assignment which purports to encumber the subject property.
- 7 10. Plaintiff attaches a true and correct copy of the following  
8 documents to support the above facts: Exhibit A "Security Deed"  
9 November 07, 2003, Exhibit B: Assignment of Security Deed dated June  
10 22, 2012.
- 11 11. Plaintiff allege that Defendant's purported "lien" is fully  
12 unsecured in that the lien having no priority over that of Plaintiff's  
13 amount is more than the value of the property at the time of the  
14 commencement of the case.
- 15 12. Further, Plaintiff allege that for the purpose of 11 U.S.C. 506,  
16 the appropriate date of valuation is the date of the commencement of  
17 this case while the purpose of valuation is to determine if, upon  
18 immediate liquidation at the time of the commencement of the case,  
19 there would be any equity in the property such that Defendant would be  
20 able to recover any money upon its alleged lien.
- 21 13. GMAC Mortgage filed a proof of claim on October 03, 2012. The  
22 documents attached to the proof of claim include an Adjustable Rate  
23 Note from Defendant GMFS, LLC to Mortgage Electronic Registration  
24 Systems, Inc.
- 25 14. Upon investigation the Plaintiff has determined the lien on the  
26 property in question is backed by Defendant, GMFS LLC.
- 27 15. The fraudulent Assignment to RESIDENTIAL FUNDING CORPORATION was  
28 signed by Brenda Guidry, A GMFS employee who signed the document as an  
29 officer of GMFS. The two endorsements on the note appear to have been  
30 executed by other people who have been identified in other cases around  
31 the county as people who signed documents indiscriminately with bizarre  
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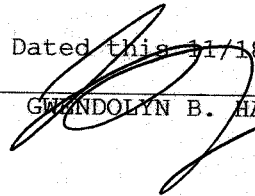
1 "limited signing authorities" associated with Defendant MERS and GMAC  
2 Mortgage.

3 16. In the event that the Defendants' lien is not perfected or could  
4 be avoided, Accordingly, Plaintiff seeks entry of a judgment that her  
5 interest in the property is superior to that of the Defendants pursuant  
6 to 11 U.S.C. 544.

7 WHEREFORE, Plaintiff prays as follows:

- 8 A. That a summons issue and be served on the Defendants, together with a  
9 copy of this complaint, and that Defendants be required to answer  
10 within the time required by law.
- 11 B. That upon a hearing of this cause the Court determines the nature and  
12 extent of the liens of the Defendants.
- 13 C. That upon a finding that the lien of the Defendants in the property is  
14 not perfected, the Court issue an order finding the interest of the  
15 Plaintiff in the property to be superior to that of the Defendants, and  
16 allow her modification to go thru as promised by GMAC. Plaintiff  
17 continued to request for a Loan Modification but to no avail. GMAC  
18 continue to request for the same documents over and over and continued  
19 to say that they never received the documents.
- 20 D. That Plaintiff be awarded her reasonable costs in pursuing this cause.
- 21 E. That Plaintiff be awarded such further relief as may be warranted by  
22 the premise.
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Dated this 11/18/2012

  
GWENDOLYN B. HAWTHORNE